

**FIFTIETH DAY**

(Continued)

(Thursday, April 15, 1965)

**After Recess**

The Senate met at 10:30 o'clock a.m., and was called to order by Senator Herring.

**Communication from Lieutenant-Governor**

Austin, Texas,  
April 15, 1965.

Hon. Charles Herring  
State Senator  
Capitol Station  
Austin, Texas

Dear Senator:

This letter is to request that you preside over the Senate and discharge the duties of this office today, April 15, in the absence of myself and that of the President Pro Tempore, Senator Tom Creighton.

Sincerely,

PRESTON SMITH,  
Lieutenant Governor

**Senate Concurrent Resolution 74**

Senator Cole offered the following resolution:

S. C. R. No. 74, Recalling Senate Bill 34 from the Governor's Office and authorizing certain corrections therein.

Be It Resolved by the Senate of the State of Texas, the House of Representatives concurring, That the Governor be and he is hereby requested to return to the Senate Senate Bill No. 34 for further consideration and correction; and be it further

Resolved, That the action of the President of the Senate and the Speaker in signing Senate Bill No. 34 be declared null and void, and that the two presiding officers be authorized to remove their signatures from the enrolled bill.

The resolution was read.

On motion of Senator Cole and by unanimous consent the resolution was considered immediately and was adopted.

**Message From the House**

Hall of the House of Representatives,  
Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

H. J. R. No. 57, A joint resolution proposing an amendment to Section 1-a of Article V of the Constitution of the State of Texas, by adding to said Section as presently written, the following provisions; requiring automatic retirement of certain District and Appellate Judges at age seventy-five (75) or such earlier age, not under seventy (70), as may be provided by law; creating a State Judicial Qualifications Commission and providing for its composition and the qualifications, methods of selection and terms of office of its members; defining the functions and procedures of said Commission, including the duty to investigate, and hold hearings in respect of, disability and misconduct of District and Appellate Judges and to make recommendations to the Supreme Court of Texas for involuntary retirement or removal of such Judges; empowering the Supreme Court of Texas, in its discretion, to retire such Judges for disability and to remove them for misconduct, upon recommendation of the aforesaid Commission and consideration of the record made before it; defining misconduct for which said Judges may be so removed; providing that the proceedings of said Commission shall be confidential until filed in the Supreme Court with recommendation for retirement or removal; and providing that the removal provisions hereby established shall be alternative to and cumulative of those provided elsewhere in the Constitution.

Respectfully submitted,

DOROTHY HALLMAN,  
Chief Clerk House of Representatives

**Senate Concurrent Resolution 75**

Senator Moore by unanimous consent offered the following resolution:

S. C. R. No. 75, Granting John W. Marley and Associates et al. permission to sue the State.

Whereas, John W. Marley & Asso-

ciates, Inc., a corporation chartered and existing under the laws of the State of Texas, with principal offices at 1714 Ferris, Lawton, Oklahoma, alleges that it now operates, and a predecessor corporation whose rights and assets it has acquired formerly operated, an automobile racing track under the name of Wichita Speedway in the City of Wichita Falls, Texas, for the conducting of automobile racing exhibitions, and that it charges and its predecessor corporation has charged for admission to such exhibitions; and

Whereas, Said John W. Marley & Associates, Inc., alleges that, in connection with the conducting of such exhibitions and the charging for admission thereto, its predecessor corporation paid to the State of Texas, through the Comptroller of Public Accounts, a total of Eighteen Thousand and Seven Hundred Thirty-Six Dollars and Thirteen Cents (\$18,736.13) as admission taxes under Chapter 21 of Title 122A RCS; and

Whereas, Amarillo Dragway, Inc., a corporation chartered and existing under the laws of the State of Texas, with principal office at 6220 Hanson Road, Amarillo, Texas, alleges that it operates and for many years has operated an automobile racing track in the City of Amarillo, Texas, for the conducting of automobile racing exhibitions, and that it charges and has charged for admission to such exhibitions; and

Whereas, Said Amarillo Dragway, Inc., alleges that, in connection with the conducting of such exhibitions and the charging for admission thereto; it has paid to the State of Texas, through the Comptroller of Public Accounts, a total of Fifteen Thousand Five Hundred Sixty-Two Dollars and Thirty-Seven Cents (\$15,562.37), as admission taxes under Chapter 21 of Title 122A RCS; and

Whereas, Said John W. Marley & Associates, Inc., and Amarillo Dragway, Inc., allege that said taxes were not properly due and payable to the State of Texas; that the Comptroller of Public Accounts was not authorized to levy and collect said taxes; that said taxes were paid under duress; and that said taxes should be refunded; and

Whereas, The Comptroller of Public Accounts denies these contentions and avers that said corporations are

not entitled to have said taxes refunded to them; and

Whereas, Such controversies should be determined and decided by the Courts of this State; now, therefore, be it

Resolved by the Senate of Texas, the House of Representatives concurring, that said John W. Marley & Associates, Inc., and Amarillo Dragway, Inc., be, and they are hereby, given permission to sue the State of Texas, jointly or by separate suits, in any Court of competent jurisdiction in said State to determine whether or not the State is liable to refund to them the taxes hereinabove referred to; and be it further

Resolved, That service of citation and of any other legal process in any such suit shall be had upon the Comptroller of Public Accounts and upon the Attorney General of the State of Texas, with service of process upon both of these two officials to have the same force and effect as the service of process upon a defendant in any other civil case, according to the Rules of Civil Procedure as promulgated and adopted by the Supreme Court of Texas; and be it further

Resolved, That any such party in any such suit shall have the right of appeal as provided for in other civil cases; and be it further

Resolved, That nothing herein shall be construed as an admission on the part of the State of Texas, or any of the Departments or Agencies of the State of Texas, or any of the political subdivisions of the State of Texas, as to the validity of any allegations or claims asserted in any such suit; but that all allegations and claims asserted in said suit must be proved as in other suits under the same rules of evidence and the same laws as apply in and govern the trial of other civil cases; and be it further

Resolved, That nothing herein shall be construed as a waiver of any defenses, of fact as well as of law, that may be asserted by or available to the State of Texas, or any of the Departments or Agencies of the State of Texas, or any of the political subdivisions of the State of Texas, in said suit, but all such defenses are hereby specifically reserved.

The resolution was read and was

referred to the Committee on Jurisprudence.

#### **Motion to Re-refer House Bill 33**

Senator Blanchard asked unanimous consent that H. B. No. 33 be withdrawn from the Committee on Jurisprudence and re-referred to the Committee on Insurance.

There was objection.

#### **Senate Bill 226 With House Amendment**

Senator Watson renewed his motion to concur in the House amendment to S. B. No. 226 which was made on yesterday and the amendment printed in the Journal on that date.

The motion prevailed.

#### **Bills and Resolutions Signed**

The Acting President signed in the presence of the Senate after the captions had been read, the following enrolled bills and resolutions:

S. B. No. 325, A bill to be entitled "An Act authorizing the Laredo Trade Zone Corporation to establish, operate and maintain a foreign trade zone at Laredo, Webb County, Texas, and other subzones; authorizing the Laredo Trade Zone Corporation to apply to the Foreign Trade Zone Board, Washington, D. C., for a grant to permit the establishment, operation and maintenance of the foreign trade zone and sub-zones in accordance with federal laws and the regulations of the Federal Trade Zones Board; authorizing the acceptance of such grant; and declaring an emergency."

S. B. No. 227, A bill to be entitled "An Act relating to the compensation of the county judge of McLennan County; and declaring an emergency."

S. B. No. 329, A bill to be entitled "An Act validating all action taken by the commissioners' court of certain counties in connection with ordering an election for the issuance of general obligation bonds for the purpose of erecting public health administration buildings and acquiring sites and equipment therefor; validating all such elections and all such bonds voted or attempted to be voted which have not been issued and sold; etc.; and declaring an emergency."

S. B. No. 35, A bill to be entitled

"An Act authorizing the State Board of Education to supply equipment and tangible apparatus to blind scholastics; amending Chapter 315, Acts of the 55th Legislature, Regular Session, 1957, as amended; and declaring an emergency."

S. B. No. 294, A bill to be entitled "An Act amending Subdivision (a) of Section 2 of Chapter 413 of the 53rd Legislature, Page 1005, as amended by Chapter 223, Section 18, Acts of the 56th Legislature, Page 505, (codified as Article 442c of Vernon's Annotated Civil Statutes of Texas), in regard to the definition of "institution," in order to cover the licensing of maternity homes and maternity shelters which may not be subject to regulation under existing licensing laws; containing a severance clause; and declaring an emergency."

S. C. R. No. 35, Granting Delta Electric Construction Company, Inc., permission to sue the State of Texas, etc.

S. C. R. No. 69, In memory of Col. Eugene Vierling Spence.

S. C. R. No. 72, Granting a half-day holiday to State employees on Good Friday.

#### **At Ease**

The Presiding Officer (Senator Herring in the Chair) announced at 10:45 that the Senate would stand At Ease Subject to the Call of the Chair.

#### **In Legislative Session**

The Presiding Officer (Senator Herring in the Chair) called the Senate to order as In Legislative Session at 10:50 o'clock a.m.

#### **Senate Resolution 500**

Senator Richter offered the following resolution:

Whereas, We are honored today to have with us Ruby Kilpatrick and Bill Kilpatrick, the daughter and son of our esteemed Member of the House, the Honorable Rufus Kilpatrick, and

Whereas, It is the desire of the Senate of Texas to utilize the services of these fine young citizens; now, therefore, be it

Resolved, by the Senate of Texas, That they be appointed honoray pages of the Senate for today, April 15, 1965.

The resolution was read and was adopted.

#### Reports of Standing Committee

Senator Hazlewood by unanimous consent submitted the following reports:

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on State Affairs, to which was referred S. C. R. No. 68, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HAZLEWOOD, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on State Affairs, to which was referred S. B. No. 508, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HAZLEWOOD, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on State Affairs, to which was referred H. B. No. 692, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HAZLEWOOD, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on State Affairs, to which was referred S. B. No. 236, have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass, but that the Committee Substitute adopted in lieu thereof do pass and be printed.

HAZLEWOOD, Chairman.

C. S. S. B. No. 236 was read the first time.

#### Bill Signed

The Acting President signed in the presence of the Senate after the caption had been read, the following enrolled bill:

S. B. No. 336, A bill to be entitled "An Act amending House Bill 328, Chapter 462, Acts 54th Legislature, Regular Session, 1955, codified as Article 3174b-3, Revised Civil Statutes, providing for occupational therapy programs as institutions under the control and management of the Board for Texas State Hospitals and Special Schools; and declaring an emergency."

#### Leave for Employees of Senate

On motion of Senators Hardeman and Kazen and by unanimous consent the pages and other employees of the Senate whose duties did not require them to be present were granted permission to be absent during the Easter Holidays.

#### Adjournment

On motion of Senator Word the Senate at 10:53 o'clock a.m. adjourned until 10:30 o'clock a.m. on Tuesday, April 20, 1965.

#### APPENDIX

#### Reports of Standing Committee

Senator Hardeman by unanimous consent submitted the following reports:

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on En-grossed and Enrolled Bills, to which was referred:

S. B. No. 227, "An Act relating to the compensation of county judges of certain counties; and declaring an emergency."

have carefully compared same and find it correctly enrolled.

HARDEMAN, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on En-grossed and Enrolled Bills, to which was referred:

S. B. No. 329, "An Act validating all action taken by the Commissioners Court of certain counties in connection with ordering an election for the issuance of general obligation bonds for the purpose of erecting public health administration buildings and acquiring sites and equipment therefor; validating all such elections and all such bonds voted or attempted to be voted which have not been issued and sold; providing this Act shall not affect pending litigation; authorizing certain counties to proceed with the issuance and sale of such bonds; authorizing certain counties to erect and maintain and to expand and repair public health administration buildings acting either alone or jointly with any city in such county and to acquire sites and equipment therefor; providing such buildings shall not be used for hospital purposes; providing a severability clause; and declaring an emergency."

have carefully compared same and find it correctly enrolled.

HARDEMAN, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on En-grossed and Enrolled Bills, to which was referred:

S. B. No. 35, "An Act authorizing the State Board of Education to supply free textbooks to blind and visually handicapped scholastics; amending Chapter 315, Acts of the 55th Legislature, Regular Session, 1957, as amended; and declaring an emergency."

have carefully compared same and find it correctly enrolled.

HARDEMAN, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on En-grossed and Enrolled Bills, to which was referred:

S. B. No. 294, "An Act amending subdivision (a) of Section 2 of Chapter 413 of the 53rd Legislature, Page 1005, as amended by Chapter 223, Section 18, Acts of the 56th Legislature, Page 505, (codified as Article 4442c of Vernon's Annotated Civil Statutes of Texas), in regard to the definition of "institution," in order to cover the licensing of maternity homes and maternity shelters which may not be subject to regulation under existing licensing laws; containing a severance clause; and declaring an emergency."

have carefully compared same and find it correctly enrolled.

HARDEMAN, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on En-grossed and Enrolled Bills, to which was referred:

S. B. No. 325, "An Act authorizing the Laredo Trade Zone Corporation to establish, operate and maintain a foreign trade zone at Laredo, Webb County, Texas, and other sub-zones; authorizing the Laredo Trade Zone Corporation to apply to the Foreign Trade Zone Board, Washington, D. C., for a grant to permit the establishment, operation and maintenance of the foreign trade zone and sub-zones in accordance with federal laws and the regulations of the Federal Trade Zones Board; authorizing the acceptance of such grant; and declaring an emergency."

have carefully compared same and find it correctly enrolled.

HARDEMAN, Chairman.

Austin, Texas,  
April 15, 1965.

Hon. Preston Smith, President of the Senate.

Sir: We, your Committee on En-grossed and Enrolled Bills, to which was referred:

S. B. No. 336, "An Act amending House Bill No. 328, Chapter 462, Acts

54th Legislature, Regular Session, 1955, codified as Article 3174b-3, Revised Civil Statutes, providing for occupational therapy programs at institutions under the control and management of the Board for Texas State Hospitals and Special Schools; and declaring an emergency."

have carefully compared same and find it correctly enrolled.

HARDEMAN, Chairman.

**Sent to Governor**

April 15, 1965

S. B. No. 329

S. B. No. 336

S. B. No. 294

S. B. No. 227

S. B. No. 35

S. B. No. 325

S. C. R. No. 69

S. C. R. No. 72

S. C. R. No. 35

**In Memory of**  
**Hyman L. Fortinberry, Jr.**

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Senator Moore offered the following resolution:

(Senate Resolution 498)

Whereas, On Friday, February 12, 1965, the City of Marlin and the State of Texas was deeply saddened by the sudden loss of one of our prominent and outstanding business and civic leaders, Hyman L. Fortinberry, Jr.; better known to his many friends and associates as "Hy," and

Whereas, He was associated with Burrus Mills in sales and public relations, and

Whereas, He was associated with R. E. (Dick) Dwelle, owner and publisher of the Athens Daily Review as advertising manager prior to his coming to Marlin, September 1, 1960, to take active charge as publisher of both the Daily and Semi-Weekly "Marlin Democrat," and

Whereas, Mr. Fortinberry became acquainted with nearly everyone in Marlin and surrounding communities and he devoted much of his time and efforts to help the citizens in all civic affairs, and

Whereas, He was a graduate of Southwestern University, Georgetown, where he majored in Business Administration and was a member of the University golf team as well as active in campus and fraternity affairs. He was a member of Pi Kappa Alpha, and

Whereas, He was a member of the Vestry of St. John's Episcopal Church of Marlin; Director of the Chamber of Commerce; member of the Board of Directors of the Rotary Club, now, therefore be it

Resolved, That the Senate of Texas does hereby express its deep and abiding sympathy to the members of his family and that copies of this Resolution under the Seal of the Senate, be sent to his survivors, namely his parents, Mr. and Mrs. Hyman L. Fortinberry, Sr. of Baytown; two aunts, Mrs. Lydia Cage and Mrs. R. B. Campbell of Houston, and an uncle, Capt. H. C. Cage of Houston, and be it further

Resolved, That a page be set aside in the Senate Journal as a memorial to Hyman L. (Hy) Fortinberry, Jr., and that when the Senate adjourns today that it do so in his memory.

**MOORE**  
**WATSON**

Signed—Lieutenant Governor Preston Smith; Aikin, Bates, Blanchard, Calhoun, Cole, Colson, Creighton, Crump, Dies, Hall, Hardeman, Harrington, Hazlewood, Herring, Hightower, Kazen, Kennard, Krueger, Parkhouse, Patman, Ratliff, Reagan, Richter, Rogers, Schwartz, Snelson, Spears, Strong, Word.

The resolution was read.

On motion of Senator Watson and by unanimous consent the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was then unanimously adopted by a rising vote of the Senate.

In Memory of

**Joseph Clark Holloway**

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Senator Moore offered the following resolution:

(Senate Resolution 499)

Whereas, On Friday, February 12, 1965, Our Heavenly Father called from his earthly home one of our pioneer citizens and prominent businessmen of Marlin, Joseph Clark Holloway, and

Whereas, Mr. Holloway was born in Pineapple, Alabama, January 20, 1873, and came to Marlin with his parents, Mr. and Mrs. J. N. Holloway at the age of eleven, and

Whereas, He married Annie Lou Oltorf in 1897 in Marlin who preceded him in death in 1952, and

Whereas, Mr. Holloway went into the men's clothing business in Marlin in 1898 where he remained active in the business of Holloway & Son until becoming ill several months ago, and

Whereas, He was a member of the First Baptist Church in Marlin, and

Whereas, He was active in many of the city's civic and business affairs and he was a member of the Marlin School Board for a number of years, now, therefore be it

Resolved, That the Senate of Texas does hereby express its deep and abiding sympathy to the members of his family and that copies of this Resolution under the Seal of the Senate, be sent to his survivors, a daughter, Mrs. Van Harris, a son, Oltorf Holloway; both of Marlin; a brother, Newton Holloway of Dallas; and a grandson, Joe Holloway of Marlin, and be it further

Resolved, That a page be set aside in the Senate Journal as a memorial to Joseph Clark Holloway and that when the Senate adjourns today it do so in his memory.

The resolution was read and was adopted by a rising vote of the Senate.